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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/688,488 | 10/16/2000 | Mario J. Restive | 86165.000030 | 9902 |

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EXAMINER

HWU, DAVIS D

ART UNIT

PAPER NUMBER

3752

DATE MAILED: 02/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/688,488

Applicant(s)

RESTIVE, MARIO J.

Examiner

Davis Hwu

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allison.

The patent to Allison discloses a sprayer for releasably engaging a container of liquid, the container including an outlet valve 36, the sprayer comprising:

- a venturi 84; and
- a plunger 72 fluidly connected to the venturi and movable between a closed position and an activating position in response to a flow through the venturi (Column 5, lines 27-31), wherein the plunger is fluidly connected to the venturi to expose a negative pressure to the plunger in response to the flow through the venturi since plunger 70 is being moved by suction.

Although element 72 is not called a plunger, it is considered to be a plunger since it moves back and forth to induce or cut-off fluid from supply line 38 due to venturi effect. Regarding claim 2, it would have been an obvious matter of design choice to have the venturi create a positive pressure on the plunger, since such a modification would have involved re-arranging the plunger 70 and the spring 74 so that plunger will be pushed in by the positive pressure to release fluid from the container.

3. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allison.

The patent to Allison discloses a spray assembly connectable to a container having an actuable outlet valve, comprising a venturi and an actuator 74 connected to the venturi to actuate the outlet valve in response to a flow through the venturi. Although element 72 is not called a plunger, it is considered to be a plunger since it moves back and forth to induce or cut-off fluid from supply line 38 due to venturi effect.

4. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allison.

The patent to Allison discloses a sprayer assembly for releasably engaging an additive source having an outlet valve, the assembly comprising a housing having a venturi, the housing configured to releasably engage a source of pressurized carrier liquid for generating a flow through the venturi and an actuator 72 moveably connected to the housing between an actuating position and a closed position. Although element 72 is not called an actuator, it is considered to be an actuator since it moves back and forth to induce or cut-off fluid from supply line 38 due to venturi effect.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Allison.

The patent to Allison discloses a spray assembly for engaging an additive source comprising a housing having a venturi 84 configured to generate sufficiently reduced pressure to entrain an additive at a flow rate through the venturi and a plunger 72 moveably connected to the housing between a first position and a second position in

response to a flow through the venturi. The 1.5 gpm would have been an obvious matter of design choice based on the operating requirements of the device.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gosselin et al.

The patent to Gosselin et al. discloses a first embodiment of a sprayer assembly comprising:

- a venturi 496;
- a plunger fluidly connected 464 fluidly connected to the venturi and moveable between an open position closed position, the plunger including a passageway 458 therethrough.

Gosselin et al. also discloses a check valve 389 in another of their embodiments. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the first embodiment of Gosselin et al. by incorporating a check valve into the first embodiment as already taught by Gosselin et al. to prevent backflow.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Adkins, Tracy, Mocarski, and Kromrey et al. are pertinent to Applicant's invention in disclosing an aspiration sprayer.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Davis Hwu whose telephone number is 703-305-1663. The examiner can normally be reached on M-F 7:30 AM to 4:00 PM.

Application/Control Number: 09/688,488
Art Unit: 3752

Page 5

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y. Mar can be reached on (703)308-2087. The fax phone numbers for the organization where this application or proceeding is assigned are (703)308-7766 for regular communications and (703)308-7766 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0861.

A handwritten signature in black ink, appearing to read 'Davis Hwu', with a long horizontal stroke extending to the right.

Davis Hwu
January 30, 2003